



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB008]

Endangered and Threatened Species; Initiation of 5-Year Review for Southern Resident Killer Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for information.

SUMMARY: We, NMFS, announce our intent to conduct a 5-year review of Southern Resident killer whales (*Orcinus orca*) under the Endangered Species Act of 1973, as amended (ESA). The purpose of 5-year reviews is to ensure that the listing classification of a species remains accurate. This 5-year review will be based on the best scientific and commercial data available at the time of the review; therefore, we request submission of any such information on Southern Resident killer whales that has become available since our previous 5-year review was completed in 2016. Based on the results of this 5-year review, we will make the requisite determination under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than *[insert date 60 days after the date of publication in the FEDERAL REGISTER]*. While we continue to accept new information about any listed species at any time, information received after the date stated above may not be considered for purposes of this 5-year review.

ADDRESSES: You may submit information, identified by docket number NOAA-NMFS-2021-0029, by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov. In the Search box, enter the above docket number for this notice. Then, click on the Search icon. On

the resulting web page, click the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail or hand-delivery:* Submit written information to Lynne Barre, NMFS West Coast Region, 7600 Sand Point Way NE, Seattle, WA 98115.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Lynne Barre, West Coast Regional Office, 206-526-4745, lynne.barre@noaa.gov.

SUPPLEMENTARY INFORMATION: Under the ESA, the U.S. Fish and Wildlife Service maintains a list of all endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants), and NMFS maintains an enumeration of the ESA-listed species under NMFS’ jurisdiction at 50 CFR 223.102 (threatened species) and 50 CFR 224.101 (endangered species). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be delisted or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither

endangered nor threatened for one or more of the following reasons: (1) the species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; or (3) the listed entity does not meet the statutory definition of a species. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Southern Resident killer whale distinct population segment (DPS) currently listed as endangered (70 FR 69903; November 18, 2005).

Background information on Southern Resident killer whales including the endangered listing, status reviews, critical habitat designation, recovery planning and protective regulations is available on the NMFS web site at <https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/southern-resident-killer-whale-orcinus-orca>. Below is a brief list of several significant actions since the endangered listing of the Southern Resident killer whale DPS. Critical habitat was designated in November 2006 (71 FR 69054) and includes 2,560 square miles (6,630 square kilometers (sq km)) of marine habitat in Haro Strait and waters around the San Juan Islands, Puget Sound, and the Strait of Juan de Fuca. On September 19, 2019 we proposed to revise the critical habitat designation by designating six new areas along the U.S. West Coast (84 FR 49214). The final Recovery Plan was released in January 2008 (73 FR 4176), and contains detailed information on status, threats and recovery actions for Southern Resident killer whales. Regulations to protect Southern Resident killer whales from vessel effects were released in April 2011 (76 FR 20870). A 5-year review was completed in 2011 and 2016 and both concluded that no change was needed to the endangered status (NMFS 2011; 2016). In 2014 we released a report summarizing research and recovery efforts over the last 10 years. The report and other supporting documents and media are available on our web site at

<https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/southern-resident-killer-whale-orcinus-orca>. In 2015, Southern Resident killer whales were named as a Species in the Spotlight (SIS). They are one of nine marine species that NMFS considers to be most at risk of extinction in the near future. For more information on the SIS initiative, please visit our web site at

<https://www.fisheries.noaa.gov/topic/endangered-species-conservation#species-in-the-spotlight>. Our most recent Recovering Threatened and Endangered Species FY 2017 – 2018 Report to Congress summarizes recovery progress since the inception of the SIS initiative and is available at

<https://www.fisheries.noaa.gov/resource/document/recovering-threatened-and-endangered-species-report-congress-fy-2017-2018>. In 2018-2019, the Governor of Washington State signed an Executive Order and established a Southern Resident Killer Whale Task Force, and the task force released two reports with recommendations for actions to support recovery of Southern Resident killer whales.

Determining if a Species is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available

scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of Southern Resident killer whales. The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; (5) need for additional conservation measures or updates to the Recovery Plan; (6) adequacy of the recovery criteria, including information on recovery criteria that have or have not been met; and (7) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list of endangered and threatened species, and improved analytical methods for evaluating extinction risk.

Any new information will be considered during the 5-year review and may also be useful in evaluating the ongoing recovery program for Southern Resident killer whales. For example, information on conservation measures will assist in tracking implementation of actions in the Recovery Plan.

If you wish to provide information for this 5-year review, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person

represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 19, 2021.

Margaret H. Miller,

Acting Chief, Endangered Species Division,

Office of Protected Resources,

National Marine Fisheries Service.

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